

Bruce G. Vanyo (SBN 60134)  
bruce@kattenlaw.com  
Yonaton M. Rosenzweig (SBN 248137)  
yoni.rosenzweig@kattenlaw.com  
KATTEN MUCHIN ROSENMAN LLP  
2029 Century Park East, Suite 2600  
Los Angeles, CA 90067-3012  
Telephone: 310.788.4400  
Facsimile: 310.788.4471

Michael J. Lohnes (*Pro Hac Vice*)  
michael.lohnes@kattenlaw.com  
KATTEN MUCHIN ROSENMAN LLP  
525 West Monroe Street  
Chicago, IL 60661-3693  
Telephone: 312.902.5341  
Facsimile: 312.577.4721

Attorneys for Defendant  
ClickSoftware Technologies Ltd.

**THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

VINCENT ZINNI, on behalf of himself  
and those similarly situated,

Plaintiff,

v.

CLICKSOFTWARE TECHNOLOGIES  
LTD., ISRAEL BOROVICH, MOSHE  
BENBASSAT, SHAI BEILIS, NIRA  
DROR, SHLOMO NASS, MENAHEM  
SHALGI, GIL WEISER, FRANCISCO  
PARTNERS, LP, OPTIMIZER TOPCO  
S.A.R.L, OPTIMIZER MERGER  
HOLDINGS LTD.

Defendants.

Case No.: 15-cv-00863-JLS-JCGx

**CONFIDENTIALITY STIPULATION  
AND ORDER**

1 WHEREAS, Plaintiff Vincent Zinni and Defendant ClickSoftware  
2 Technologies Ltd., are prepared to engage in discovery in the above-captioned matter  
3 (the “Litigation”), which may include, among other things, taking depositions and  
4 producing documents for inspection and copying;

5 WHEREAS, the companies and individuals named in the Litigation could be  
6 prejudiced by the public disclosure of non-public financial data, business strategies, or  
7 other confidential, privileged, proprietary or otherwise commercially sensitive  
8 information or documents;

9 WHEREAS, good cause exists for entry of this Confidentiality Stipulation and  
10 Order (the “Stipulation and Order”); and

11 WHEREAS, the entry of this Stipulation and Order will promote the fair and  
12 expeditious resolution of this litigation;

13 IT IS HEREBY ORDERED, that pursuant to Federal Rule of Civil Procedure  
14 26, the handling of documents, testimony, depositions, deposition exhibits and any  
15 other information produced, received or exchanged by and among the parties and any  
16 non-parties to this Litigation be governed by the following (such information  
17 hereinafter referred to as “Discovery Material”):

18 1. In responding to requests for discovery, any party providing Discovery  
19 Material (the “Producing Party”) may designate such Discovery Material as  
20 “Confidential” or “Highly Confidential” pursuant to this Stipulation and Order if the  
21 Producing Party believes in good faith that such Discovery Material contains non-  
22 public or other commercially sensitive information that requires the protections  
23 provided by this Stipulation and Order (“Confidential Information” or “Highly  
24 Confidential Information”).

25 2. For purposes of this Stipulation and Order, information considered to be  
26 “Confidential” Discovery Material includes material that counsel in good faith  
27 believes contains or reflects non-public, confidential, financial, or commercially,  
28 personally, or legally sensitive information.

3. For purposes of this Stipulation and Order, information considered to be “Highly Confidential” Discovery Material includes all non-public materials reflecting ongoing negotiations with potential investors, partners, or acquirers; alternative acquisition offers or expressions of interest; proposed strategic transactions or other business combinations with parties other than Francisco Partners Management, L.P. and its affiliates and ClickSoftware Technologies Ltd.; SEC examination or other confidential regulatory matters; trade secrets or other current proprietary technical information; current pricing or cost information or information regarding customer contracts; financial or business plans or projections; documents subject to a confidentiality obligation owed by a Producing Party to any third party; or other sensitive business or commercial information, such that disclosure of the information may result in competitive injury to the Producing Party (other than such harm as might arise from it being adverse evidence in the Litigation).

4. The designation of Discovery Material as Confidential or Highly Confidential for purposes of this Stipulation and Order shall be made in the following manner by any Producing Party:

(a) stamping or otherwise marking documents and things (or portions thereof) with the word “Confidential” or “Highly Confidential”. In the case of multi-page documents, each page which is designated as “Confidential” or “Highly Confidential” shall be appropriately stamped.

(b) in the case of depositions or other pre-trial testimony: (i) by a statement on the record, by counsel, at the time of or following such disclosure, that such testimony shall be treated as Confidential or Highly Confidential Information; or (ii) by written notice, sent by counsel to all parties within ten (10) business days after receiving a copy of the transcript, that such testimony shall be treated as Confidential or Highly Confidential Information, and including a copy of the deposition transcript containing the designation “Confidential” or “Highly Confidential” for each page of testimony so designated. Until the ten-business-day period expires, the entirety of such transcripts

1 shall be treated as Highly Confidential Information. The parties may modify this  
2 procedure for any particular deposition through agreement on the record at such  
3 deposition without further order of the Court.

4 5. More than one party may designate the same material as Confidential  
5 Material or Highly Confidential Material. If a non-producing party designates  
6 material as Confidential Material or Highly Confidential Material, it shall do so by  
7 giving written notice to all parties within thirty (30) days of production that the  
8 material is to be so designated by stamping or otherwise marking the designated  
9 material as Confidential Material or Highly Confidential Material as described above.

10 6. Any Producing Party may also apply for an order to supplement the  
11 foregoing categories of Confidential or Highly Confidential Information or to  
12 establish that particular Discovery Material not within the foregoing categories is  
13 Confidential or Highly Confidential.

14 7. Discovery Material, or information derived therefrom, shall be used  
15 solely for the purposes of this Litigation and shall not be used for any other purpose,  
16 including, without limitation, any business or commercial purpose or in pursuit of any  
17 other litigation or claim, or any communications with, between or among stockholders  
18 not involved in this Litigation.

19 8. Discovery Material designated as “Confidential” may be disclosed,  
20 summarized or otherwise communicated in whole or in part by a Receiving Party only  
21 to the following persons:

22 (a) the parties and counsel who represent the parties that have  
23 appeared in the Litigation (and legal counsel’s staff) for use in accordance with this  
24 Stipulation and Order;

25 (b) experts or consultants as may be necessary to provide assistance in  
26 the Litigation, pursuant and subject to paragraph 9(a) of this Stipulation and Order;

27 (c) deposition witnesses;  
28

(d) the directors, officers, employees (including, but not limited to, inside counsel), management personnel and/or investment advisors of the parties or any subsidiary or affiliate thereof, who are assisting the parties in this Litigation, or who appear as witnesses or deponents, and any professional employee of any person providing professional advice to any of the corporate defendants;

(e) authors of documents not otherwise covered by paragraph 8, but only for those documents authored by the individual;

(f) recipients of documents not otherwise covered by paragraph 8, but only for those documents received by the individual;

(g) any person to whom the Producing Party previously provided Confidential Information and who is not otherwise covered by paragraph 8, but only for those documents previously provided;

(h) the Court, Court personnel, court reporters employed in connection with the Litigation, and photocopy or e-discovery services retained by counsel;

(i) employees and consultants of the Court necessary for the adjudication of this Litigation; and

(j) any other person only upon order of the Court or upon stipulation of the Producing Party.

9. Discovery Material designated by the Producing Party as “Confidential,” may be provided to persons listed in paragraph 8(b) above to the extent necessary for such expert or consultant to prepare a written opinion, to prepare to testify, or to assist counsel in the prosecution of the Litigation, *provided* that such expert or consultant (i) is not currently advising, or engaged to advise, any direct business competitor of, or actual party to any transaction or business relationship with, the Producing Party, and (ii) is using said Confidential Information solely in connection with the Litigation, and *further provided* that such expert or consultant confirms his or her understanding and agreement to abide by the terms of this Stipulation and Order by signing a copy of an Agreement To Be Bound By Protective Order in the form attached as Exhibit A

1 hereto, which copy shall be maintained by counsel for the Receiving Party who seeks  
2 to disclose such Confidential Information, and copies of any executed Agreement To  
3 Be Bound By Protective Order shall be disclosed to counsel for the Producing Party.

4 10. Before a party or its counsel may show or disclose Discovery Material  
5 designated by another party as “Confidential” to any person listed in paragraph 8(c)  
6 (to the extent such persons are not covered by the other subparagraphs of paragraph  
7 8), that person shall be advised that the Confidential Information is disclosed subject  
8 to this Stipulation and Order and may not be disclosed other than pursuant to its terms.

9 11. Discovery Material designated as “Highly Confidential” may be  
10 disclosed, summarized or otherwise communicated in whole or in part by a Receiving  
11 Party only to the following persons:

12 (a) outside counsel to the parties, provided such counsel have  
13 submitted their appearance with the Court in the Litigation, and regular and temporary  
14 employees of such counsel necessary to assist in the conduct of the Litigation for use in  
15 accordance with this Stipulation and Order;

16 (b) a non-party witness or deponent and his or her counsel if it appears  
17 from the face of the document that the document was received by that witness, authored  
18 by that witness, or communicated to that witness, or that such witness is employed by a  
19 party or non-party that authored or received the document;

20 (c) experts or consultants, including litigation support vendors, who  
21 are not officers, directors, managers or employees of any party and who are necessary to  
22 assist outside counsel of record in the conduct of the Litigation; provided, however, that  
23 Discovery Material designated as Highly Confidential shall not be disclosed to any  
24 expert or consultant who is assisting or advising in any way, any person, or the attorney  
25 for any person, in any matter other than this Litigation that is adverse to the other parties  
26 in this Litigation. Any such persons receiving Discovery Material designated Highly  
27 Confidential shall first agree to abide by the terms and conditions of this Stipulation and  
28

Order, and shall so evidence such undertaking by signing the form attached hereto as Exhibit A;

(d) the Court, Court personnel, and similar personnel; provided that a receiving party who seeks to file with the Court any deposition transcripts, exhibits, answers to interrogatories and other documents which have previously been designated as comprising or containing Confidential Material and/or Highly Confidential Material, and any pleading, brief or memorandum which reproduces, paraphrases or discloses Confidential Material and/or Highly Confidential Material, shall provide all other parties with seven (7) business days' written notice of its intent to file such material with the Court, so that the Producing Party may file by Order to Show Cause a motion to seal such Confidential Material and/or Highly Confidential Material;

(e) Court reporters employed in connection with the Litigation; and

(f) any other person only upon order of the Court or upon stipulation of the party that produced the Discovery Material designated as Highly Confidential.

12. Notwithstanding the other terms of this Stipulation and Order, the Producing Party may request in writing (or on the deposition record in the case of testimony) that Confidential or Highly Confidential Information not be disclosed to particular persons or categories of persons to whom Confidential or Highly Confidential Information would otherwise be permitted to be disclosed. Such a request shall be made only if disclosure of Confidential or Highly Confidential Information to the particular person or categories of persons is reasonably likely to cause injury to the Producing Party's business interests. Any disagreement over such request shall be resolved promptly or, absent such resolution, the parties hereby consent to an expedited hearing upon the motion of the Producing Party to resolve their disagreement and, pending such resolution, the confidentiality of Confidential or Highly Confidential Information shall be maintained in accordance with the Producing Party's request.

13. All documents of any nature, including briefs, which have been



designated as “Confidential” or “Highly Confidential” that are lodged and/or filed with the Court and authorized to be filed under seal, shall be filed under seal, in accordance with the following procedures. In connection with filing any material under seal, or attempting to file any material under seal, the parties agree to refrain, wherever possible, from including Confidential or Highly Confidential Information in the titles of the documents filed with the Court so that, in all instances, the titles of the documents – and the Court’s docket sheet reflecting those titles – may remain public. Moreover, all filings to be filed under seal, in whole or in part, must be so designated by the party making the filing. Filings containing Confidential or Highly Confidential Information may be filed under seal in their entirety.

14. Entering into, agreeing to, and/or producing or receiving Confidential or Highly Confidential Information or otherwise complying with the terms of this Stipulation and Order shall not:

(a) operate as or constitute an admission by any party that any particular Confidential or Highly Confidential Information contains or reflects trade secrets, proprietary or commercially sensitive information or any other type of confidential matter;

(b) operate as or constitute an admission by any party that the restrictions and process set forth herein constitute adequate protection for any particular information deemed by such Producing Party to be Confidential or Highly Confidential within the meaning of paragraph 1;

(c) operate as or constitute a waiver of any attorney-client, work product or other privilege;

(d) prejudice in any way the rights of the parties to object to the production of documents they consider not subject to discovery;

(e) prejudice in any way the rights of any party to object to the authenticity or admissibility into evidence of any document, testimony or other evidence subject to this Stipulation and Order;



(f) prejudice in any way the rights of any party to request that particular Discovery Material or Confidential or Highly Confidential Information be treated more restrictively than otherwise provided for herein, and, absent agreement of the parties, to petition the Court for a further protective order relating to any Confidential or Highly Confidential Information;

(g) prejudice in any way the rights of any party to seek a court determination whether any materials should be subject to the terms of this Stipulation and Order; or

(h) prevent the parties to this Stipulation and Order from agreeing to alter or waive the provisions or protections provided for herein with respect to particular discovery material.

15. If a party in possession of Confidential or Highly Confidential Information receives a subpoena or other compulsory process from a non-party to this Stipulation and Order seeking production or other disclosure of such Confidential or Highly Confidential Information, that party shall give written and telephonic notice to counsel for the Producing Party as soon as practicable, but in no event more than two (2) business days after receipt of the subpoena or other compulsory process, identifying the Confidential or Highly Confidential Information sought and enclosing a copy of the subpoena or other compulsory process. If the Producing Party timely seeks a protective order in the court from which the subpoena is issued, the party to which the subpoena or other compulsory process was issued or served shall not produce the Confidential or Highly Confidential Information called for prior to receiving a court order or the consent of the Producing Party, unless otherwise required by law, court rule or order. In the event that Discovery Material containing Confidential or Highly Confidential Information is produced to the non-party, it shall still be treated as Highly Confidential by the parties to this Stipulation and Order.

16. The inadvertent production of any document or other information during discovery in the Litigation shall be without prejudice to any claim that such material is

1 privileged under the attorney-client, business strategies immunity or other privilege or  
2 protected from discovery as work product, and no person shall be held to have waived  
3 any rights by the inadvertent production. Upon written request by the inadvertently  
4 producing person within five (5) business days of discovering such inadvertent  
5 production, the Receiving Party (a) shall return the original and all copies of such  
6 documents, and (b) shall not use the information for any purpose until further order of  
7 the Court or stipulation of the parties. Any party returning material to a Producing  
8 Party pursuant to this paragraph may then move the Court for an order compelling  
9 production of the material, but such motion shall not assert as grounds for entering  
10 such an order that the Producing Party waived any privilege because of the inadvertent  
11 production.

12 17. The inadvertent failure to designate materials as “Confidential” or  
13 “Highly Confidential” in accordance with Paragraph 4 herein does not constitute  
14 waiver of such claim and may be corrected by supplemental written notice at any  
15 time, with the effect that such material will be subject to the protections of this  
16 Stipulation and Order from the time it is designated “Confidential” or “Highly  
17 Confidential.” Upon receipt of such a supplemental designation, any receiving party  
18 that disclosed the material prior to its designation as “Confidential” or “Highly  
19 Confidential” shall exercise its best efforts (i) to ensure the return or destruction of  
20 such material, (ii) to ensure that any paper or electronic documents derived from any  
21 such material, which paper and electronic documents may be retained by the receiving  
22 party, is treated as if the material had originally been designated “Confidential” or  
23 “Highly Confidential,” and (iii) to ensure such material is not further disclosed except  
24 in accordance with the terms of this Stipulation and Order. If materials are  
25 redesignated “Confidential” or “Highly Confidential,” any receiving party shall  
26 exercise best efforts to return to the Producing Party, or destroy all copies of,  
27 inappropriately designated materials. The parties shall exercise best efforts to  
28 cooperate to protect later-designated materials that previously have been filed with the

1 Court.

2 18. This Stipulation and Order shall have no effect upon, and shall not apply  
3 to, the Producing Party's use of its own Confidential or Highly Confidential  
4 Information, except that any intentional publication or dissemination of such  
5 Confidential or Highly Confidential Information into the public domain shall render  
6 such information non-confidential. Nothing herein shall impose any restrictions on  
7 the use or disclosure by a party of documents, materials or information designated as  
8 "Confidential" or "Highly Confidential" obtained lawfully by such party  
9 independently of the discovery proceedings in this Litigation and not otherwise  
10 subject to confidentiality restrictions.

11 19. Third-party witnesses and other parties may avail themselves of the  
12 procedures in this Stipulation and Order for access to documents they produce by  
13 agreeing in writing to be bound by the terms, conditions and restrictions of this  
14 Stipulation and Order.

15 20. In the event additional parties join or are joined in the Litigation, they  
16 shall not have access to Confidential or Highly Confidential Information until the  
17 newly joined party has executed and filed with the Court its agreement to be fully  
18 bound by this Stipulation and Order.

19 21. During the pendency of the Litigation, any party objecting to the  
20 designation of any Discovery Material or testimony as Confidential or Highly  
21 Confidential shall so advise the designating party in writing, and the parties shall  
22 endeavor in good faith to resolve the objection. The objecting party will then have  
23 fourteen (14) business days from the date of the written objection to apply for a ruling  
24 from the Court that the Confidential or Highly Confidential designation is  
25 inappropriate. While such an application is pending, the Discovery Material or  
26 testimony in question shall be treated as Confidential or Highly Confidential  
27 Information pursuant to this Stipulation and Order.

28 22. The foregoing is without prejudice to the right of any party to this

1 Stipulation to object to the production of documents it considers not subject to  
2 discovery, or to apply to the Court for an order compelling production of documents  
3 or modification of this Stipulation or for any order permitting disclosure of  
4 Confidential Material and/or Highly Confidential Material beyond the terms of this  
5 Stipulation.

6 23. In the event that any Confidential Discovery Material or Highly  
7 Confidential Discovery Material is used in any court proceeding in this Litigation or  
8 any appeal therefrom, counsel shall confer on such procedures as are necessary to  
9 protect the confidentiality of any Confidential Discovery Material or Highly  
10 Confidential Discovery Material used in the course of any court proceeding.

11 24. If any Confidential Discovery Material or Highly Confidential Discovery  
12 Material is ever publicly disclosed or becomes part of an unsealed record of the Court  
13 in connection with this Litigation or any other matter, such Confidential Discovery  
14 Material or Highly Confidential Discovery Material shall lose its status as  
15 Confidential or Highly Confidential.

16 25. Within sixty (60) days after the conclusion of this proceeding and any  
17 related appeals, all persons having received Discovery Material containing  
18 Confidential or Highly Confidential Information shall either return such material and  
19 all copies to counsel for the Producing Party or certify in writing to the Producing  
20 Party that such documents have been destroyed. Outside counsel for the parties shall  
21 be entitled to retain court papers and exhibits (including appendices), discovery  
22 responses and objections signed by counsel, deposition and trial transcripts and  
23 attorney work product containing Confidential or Highly Confidential Information;  
24 *provided* that outside counsel, and employees of outside counsel, shall not disclose  
25 court papers or attorney work product to any person except pursuant to court order or  
26 agreement with the Producing Party.

27 26. This Stipulation does not purport to govern the admissibility of  
28 Confidential Material and/or Highly Confidential Material introduced at trial or in

1 other court proceedings related to this lawsuit or to limit or prohibit the making of any  
2 objections with respect to the relevance of Confidential Material and/or Highly  
3 Confidential Material.

4 IT IS SO STIPULATED.

5 DATED: July 15, 2015

**KATTEN MUCHIN ROSENMAN LLP**

6 By: /s/  
7 Yonaton M. Rosenzweig  
8 Attorneys for Defendant  
9 CLICKSOFTWARE TECHNOLOGIES  
10 LTD.

11 DATED: July 15, 2015

**BRODSKY & SMITH LLC**

12 By: /s/  
13 Evan J. Smith  
14 Attorneys for Plaintiff  
15 VINCENT ZINNI

[Filed with concurrence and authority]

16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

17 DATED: July 10, 2015

18   
19 HON. JAY C. GANDHI  
20 UNITED STATES MAGISTRATE JUDGE

**Katten**

**Muchin Rosenman LLP**

2029 Century Park East, Suite 2600  
Los Angeles, CA 90067-3012  
310.788.4400 tel 310.788.4471 fax

## EXHIBIT A

### Agreement to Be Bound by Protective Order

I have been informed that on \_\_\_\_\_, 2015, the U.S. District Court for the Central District of California entered a protective order in litigation titled *Zinni v. ClickSoftware Technologies Ltd., et al.*, Case No. 8:15-cv-00863-JLS-JCG. I have read the protective order, I agree to abide by the obligations of the protective order as they apply to me, and I voluntarily submit to the jurisdiction of the U.S. District Court for the Central District of California for purposes of any proceeding relating to the protective order, including my receipt and review of information that has been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

---

(Signature)

---

(Printed Name)

---

(Company)

Dated:\_\_\_\_\_